Supreme Court, U.S.
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No. 94-1081

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1994

GLORIA TURNER WILKES,

Petitioner,

v.

LEGRAND YOUNG, INDIVIDUALLY AND AS AGENT AND IN HIS OFFICIAL CAPACITY OF THE COUNTY OF FLORENCE; THE COUNTY OF FLORENCE, SOUTH CAROLINA,

Respondents.

On Petition For A Writ of Certiorari
To The United States Court of Appeals
For The Fourth Circuit

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Does the decision of the Fourth Circuit Court of Appeals present a special or important reason for granting certiorari in the instant case?

2. Did the Fourth Circuit Court of Appeals correctly apprehend and apply the law of probable cause?

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STATUTORY PROVISIONS INVOLVED
South Carolina Code of Laws

§56-5-540. Official traffic-control devices.

All signs, signals, markings and devices, not inconsistent with this chapter, placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning, or guiding traffic are "*official traffic-control devices.*"

§56-5-2530. Stopping, standing or parking prohibited in specified places; exceptions.

(A) Except when necessary to avoid conflict with other traffic, or in compliance with law or the directions of a police officer or official traffic-control device, no person shall:

(1) Stop, stand or park a vehicle:

(a) On the roadway side of any vehicle stopped or parked at the edge or curb of a street.
(b) On a sidewalk.
(c) Within an intersection.
(d) On a crosswalk.
(e) Between a safety zone and the adjacent curb or within thirty feet of points on the curb immediately opposite the ends of a safety zone, unless a different length is indicated by signs or markings.

(f) Alongside or opposite any street excavation or obstruction when stopping, standing or parking would obstruct traffic.

(g) Upon any bridge or other elevated structure upon a highway or within a highway tunnel.

(h) On any railroad tracks.

(i) On any controlled-access highway.

(j) In the area between roadways of a divided highway, including crossovers.

(k) At any place where official traffic-control devices prohibit stopping.

(2) Stand or park a vehicle, whether occupied or not, except momentarily to pick up or discharge passengers:

(a) In front of a public or private driveway.

(b) Within fifteen feet of a fire hydrant.

(c) Within twenty feet of a crosswalk at an intersection.

(d) Within thirty feet upon the approach to any flashing signal, stop sign, yield sign or traffic-control signal located at the side of a roadway.

(e) Within twenty feet of the driveway entrance to any fire station and on the side of a street opposite to any fire station with seventy-five feet of the entrance when properly signposted.

(f) At any place where official traffic-control devices prohibit standing.

(3) Park a vehicle, whether occupied or not, except temporarily for the purpose of and while actually engaged in loading or unloading property or passengers:

(a) Within fifty feet of the nearest rail or a railroad crossing.

(b) At any place where official traffic-control devices prohibit parking.

(B) No person shall move a vehicle not lawfully under his control into any such prohibited area or away from a curb such a distance as is unlawful.

§56-5-6190. General penalty for violations of chapter.

It is a misdemeanor for any person to violate any of the provisions of this chapter unless such violation is by this chapter or other law of this State declared to be a felony.

Every person convicted of a misdemeanor for a violation of any of the provisions of this chapter for which another penalty is not provided shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days.

§56-7-80. County or municipal uniform ordinance summons.

(A) Counties and municipalities are authorized to adopt by ordinance and use an ordinance summons as provided herein for the enforcement of county and municipal ordinances. Upon adoption of the ordinance summons, any county or municipal law enforcement officer or code enforcement officer is authorized to use an ordinance summons. Any county or municipality adopting the

ordinance summons is responsible for the printing, distributing, monitoring, and auditing of the ordinance summons to be used by that entity.

(B) The uniform ordinance summons may not be used to perform a custodial arrest. No county or municipal ordinance which regulates the use of motor vehicles on the public roads of this State may be enforced using an ordinance summons.

(C) An ordinance summons must cite only one violation per summons and must contain at least the following information:

(1) the name and address of the person or entity charged;
(2) the name and title of the issuing officer;
(3) the time, date, and location of the hearing;
(4) a description of the ordinance the person or entity is charged with violating;
(5) the procedure to post bond; and
(6) any other notice or warning otherwise required by law.

The ordinance summonses must be consecutively and discretely numbered. The ordinance summonses must be audited as part of the annual independent audit required in Section 4-9-150 for counties and in Section 5-7-240 for municipalities, and a separate copy of each audit must be furnished to the chief administrative officer of the county or municipality, as appropriate.

(D) Service of a uniform ordinance summons vests all magistrates' and municipal courts with jurisdiction to hear and dispose of the charge for which the ordinance summons was issued and served.

(E) Any law enforcement officer or code enforcement officer who serves an ordinance summons must allow the person served to proceed without first having to post bond or to appear before a magistrate or municipal judge. Acceptance of an ordinance summons constitutes a person's recognizance to comply with the terms of the summons.

(F) Any person who fails to appear before the court as required by an ordinance summons, without first having posted such bond as may be required or without having been granted a continuance by the court, is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars or imprisoned for not more than thirty days. Any law enforcement agency processing an arrest made pursuant to this subsection must furnish such information to the State Law Enforcement Division as required by Chapter 3 of Title 23.

(G) This statute does not prohibit a county or municipality from enforcing ordinances by means otherwise authorized by law.

HISTORY: 1992 Act No. 328, §1, eff April 10, 1992.

STATEMENT OF THE CASE

On October 17, 1989 Gloria Wilkes's daughter illegally parked on Florence County property. LeGrand Young, Superintendent of those grounds, caused a parking ticket to be placed on Mrs. Wilkes's vehicle, which called for her to appear in court on November 10, 1989. (Jt. App. 115). Upon being told about the parking ticket, Mrs. Wilkes instructed her daughter to "take care of it," but Mrs. Wilkes never actually looked at the ticket. (Jt. App. 28, 30, 34, 43-44).

The daughter did not "take care" of the ticket and Mrs. Wilkes did not appear on November 10, 1989. (Jt. App. 65). LeGrand Young did sign an affidavit *in blank*, acting under instructions of the secretary to the local magistrate, when he appeared for the purpose of prosecuting the traffic ticket. (Jt. App. 68, 81, 85, 89). Thereafter, the magistrate's secretary did complete the affidavit, but in doing so incorrectly cited the statute violated by Mrs. Wilkes as South Carolina Code §17-15-90. (Jt. App. 116). As a result of the mis-citation to the South Carolina statutes, Mrs. Wilkes was arrested and spent three or four hours in jail. (Jt. App. 40).

On October 23, 1991 the Petitioner sued LeGrand Young and the County of Florence for violating her civil rights and for six common law causes of action. The Respondent answered on November 13, 1991. Trial by jury was held on July 21, 1992, during the course of which all but three of the common law causes of action were dismissed by the Court: malicious prosecution, slander, and intentional infliction of emotional distress. (Jt. App. 96).

The jury returned a verdict for the Petitioner on the §1983 claim and on the intentional infliction of emotional distress (outrage) claim. The jury returned a verdict for the Respondents on the malicious prosecution and slander causes of action; the verdict was for $40,000 actual damages, jointly, and for $7,500 punitive damages, LeGrand Young only. (Jt. App. 20-21). The Respondents filed post-trial Motions for Judgment Notwithstanding the Verdict or for a new trial, all of which were denied by Order entered August 24, 1992.

The Respondents timely appealed the judgment against them, whereupon a panel of the United States Court of Appeals for the Fourth Circuit reversed the judgment. *Wilkes v. Young*, 28 F.2d 1362 (4th Cir. 1994). On September 19, 1994 Wilkes's Petition for Rehearing was denied by the panel and by the Fourth Circuit, *en banc*, from which denial this Petition for a Writ of Certiorari timely followed.

REASONS FOR DENYING THE WRIT

The Court Should Not Exercise Its Discretion to Review the Petition Filed by Gloria Turner Wilkes

A review on Writ of Certiorari is not a matter of right, but of judicial discretion. The Petitioner has demonstrated no special or important reasons for granting certiorari in this case. Sup. Ct. R. 10. Specifically, the decision of the United States Court of Appeals for the Fourth Circuit does not conflict either with the decision of another United States Court of Appeals, *Waterman S.S. Corp. v. United States*, 381 U.S. 252 (1965), or with the decisions of this court. *Pure Oil Co. v. Suarez*, 384 U.S. 202 (1966). Neither does the decision below decide an important question of federal law which has not been, but should be, settled by this court. *Glus v. Brooklyn Eastern Dist. Terminal*, 359 U.S. 231 (1959). Moreover, the decision of the lower court does not depart from, or sanction a departure from, the accepted and usual course of judicial proceedings. Sup. Ct. R. 10.

The Opinion of the Fourth Circuit Court of Appeals applied the controlling substantive law as set forth in *Franks v. Delaware*, 438 U.S. 154 (1978). The Petitioner has cited no procedural law from this court, or from other circuits, with which the Opinion conflicts, since the standard of review employed was that Petitioner's verdict could stand only if there was evidence upon which the jury could reasonably base its finding, after giving Petitioner the benefit of every legitimate inference in her favor. *Mays v. Pioneer Lumber Co.*, 502 F.2d 106 (4th Cir. 1974) citing

Continental Ore Co. v. Union Carbide Corp., 370 U.S. 690, 82 S.Ct. 1404, 8 L. Ed.2d 777 (1962).

To the extent that Petitioner seeks review of the Fourth Circuit's ruling on the South Carolina common law tort of intentional infliction of emotional distress, she makes no claim that an important question of federal law is involved. The Fourth Circuit exercised its duty, as enunciated under the common law, "to determine whether, on the evidence before it, the (Respondent's) conduct may reasonably constitute outrageous conduct" and only then is a question presented for the jury. *Todd v. South Carolina Farm Bureau Mutual Ins. Co.*, 321 S.E.2d 602, 609 (S.C. App. 1984), *rev'd in part on other grounds*, 336 S.E.2d 472 (S.C. 1985).

The Fourth Circuit Court of Appeals Correctly Analyzed Petitioner's Procedural Due Process Claim, Which She Based Upon an Argument That There Was no Probable Cause For Her Arrest

The Petitioner's case was devoid of any facts sufficient to state a claim against Florence County, South Carolina. In order to establish the County's liability under 42 U.S.C. §1983, the Petitioner was required to establish that the entity at issue is a "moving force behind the deprivation." *Polk County v. Dodson*, 454 U.S. 312, 326 (1981) (quoting *Monell v. Department of Social Services*, 436 U.S. 658, 694 (1978)). Consequently, the entity's

"policy or custom" must have played a part in the violation of federal law. *Oklahoma City v. Tuttle*, 471 U.S. 808, 817-818 (1985).

> As this Court stated in *Monell*:
> [A] local government may not be sued under [42 U.S.C.] §1983 for an injury inflicted solely by its employees or agents. Instead, it is when execution of a government's policy or custom, whether made by it or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government, as an entity, is responsible under [42 U.S.C.] §1983.
>
> *Id.*, quoting 436 U.S. 658, 694.

Barry Elliott, County Administrator for Florence County, can fairly be said to be the Chief Executive Officer of Florence County and the particular official to whom Florence County has delegated policy-making authority. (Jt. App. 71). He was asked only three questions about the official policy or custom of Florence County:

> Q. Mr. Young testified in his deposition which was published to the jury that he had authority to write these pieces of paper, we'll call them tickets. For the County of Florence?
>
> A. Mr. Young has had the authority, matter of fact, prior to me becoming County Administrator. That was so, maintaining the rules and regulations at the Public Service Building, yes.

Q. You knew this was going on?

A. Yes, I did.

Q. And it was going on regularly. You new that Mr. Benton and Mr. Young would simply put these pieces of paper on people's cars?

A. Yes, sir. They had no way of knowing who those cars belonged to at that particular time.

(Jt. App. 73).

This was in reference to Young's deposition testimony:

Q. Do you recall whether that job description stated anything about giving tickets out or summons out or whatever you want to call them?

A. We were instructed by Florence County that we have the authority to write them. Of course, my Superintendent does it, which I can also write them, but my Superintendent of the Buildings do it because I'm not there all the time. But we have the authority given to us by Barry Elliott to write these parking tickets.

Q. Okay. Barry Elliott gave you the authority to write those tickets?

A. Yes, sir.

Jt. App. 58.

Thus, while the Petitioner may have succeeded in establishing that it was the official policy or custom of Florence County for LeGrand Young or other employees to write and place parking tickets on the windshields of cars, *that is not the conduct about which the Petitioner complains*. The Petitioner complains about having been arrested and alleges that the arrest arose out of a false statement made when she failed to appear in answer to the parking ticket.

The Petitioner's case strongly implies that the precise nature of the improper conduct is the signing of an affidavit in blank, with perhaps reckless disregard to what is going to be put in the blanks. Mr. Elliott was not questioned about, nor did the Petitioner otherwise establish, any official policy or custom relating in any way to the signing of affidavits, the signing of affidavits in blank, or any other action to be taken by any county employee, at any level, when people fail to appear in response to a parking ticket. Young's testimony on that point is undisputed:

Q. Have you arrested, have other people been arrested?

A. *This is the first one that's never shown up.*

Q. This is the first one that's gotten arrested?

A. To my knowledge.

(Jt. App. 87, emph. supp.)

The Petitioner simply failed to prove the policy or custom of Florence County regarding such arrests and thereby failed to establish an essential element of her §1983 claim.

The United States Supreme Court in *Daniels v. Williams*, 474 U.S. 327 (1986) ruled that negligent conduct is insufficient for a procedural due process violation involving a claimed deprivation of property. The *Daniels* court even held that more than negligence is required for all due process violations, even when they involve a claimed deprivation of liberty or property. Justice Rehnquist, in *Davidson v. Cannon*, 474 U.S. 344 (1986), held that the due process clause requires for its violation some abuse of governmental power and that negligent conduct does not constitute such an abuse.

All of Petitioner's arguments rely upon one central contention: Petitioner's belief that LeGrand Young falsely swore in an affidavit which led to her arrest when he swore she "received" a summons and when he cited §17015-90 of the South Carolina Code (*sic*). The Opinion below, at n.3, correctly held the uncontroverted facts established that the summons was placed on Mrs. Wilkes's vehicle, that her daughter received it and told her about it, and that Mrs. Wilkes was aware of all pertinent facts about the summons except what she intentionally failed to read, thus there was ample evidence to establish a reasonable belief that she had received it. As *Franks v. Delaware*, 438 U.S. 154 (1978) would require if one were to view the facts in a different

light and assume that Mrs. Wilkes did not receive the summons, every statement which the Petitioner contends to be false or misleading can be stricken from the affidavit and probable cause still exists. Deleting the reference to receiving the summons and deleting the statutory reference, Young's affidavit reads:

> I further state that there is probable cause to believe that (Gloria Turner Wilkes) did commit the crime (of failure to appear in court [magistrate]) and that such probable cause is based on the following facts: That on 11/10/89, the Respondent did fail to report to Magistrate Court as required by a summons ... for parking in a fire lane ... . Incident happened in the parking lot of the Florence County Public Service Bldg.
>
> Jt. App. 116.

Every word in contention, "that she received on 10/17/89" and "thus violating S.C. Code of Law #17015-90," being removed, the affidavit still establishes probable cause to believe Mrs. Wilkes unlawfully failed to appear in the Magistrate's Court.

The Petition relies heavily upon the argument that the 1992 enactment of S.C. CODE ANN. §56-7-80 (Supp. 1994) would be superfluous if Florence County had already possessed a means of enforcing its summonses. Paragraph (G) of §56-7-80 makes it clear, however, that the enactment of the statute "does not prohibit a county ... from enforcing ordinances by means otherwise authorized by law." Thus,

the statute contemplates enforcement mechanisms beyond those prescribed in it. Indeed, S.C. CODE ANN. §56-5-710(1) (1991) has been in effect, substantially unchanged, for decades and makes clear that Chapter 5 of Title 56 does not present local authorities from reasonably exercising their police power by "regulating the standing or parking of vehicles."

It is a violation of state law for a person to stop, stand, or park a vehicle "any place where official traffic-control devices prohibit" stopping, standing, or parking. S.C. CODE ANN. §56-5-2530(A)(1)(k), (A)(2)(f), and (A)(3)(b) (1991). An "official *traffic-control* device" is defined as any sign, signal, marking, or device placed or erected by authority of a public body "or official having jurisdiction" for the purpose of regulating, warning, or guiding traffic. S.C. CODE ANN. §56-5-540 (1991).

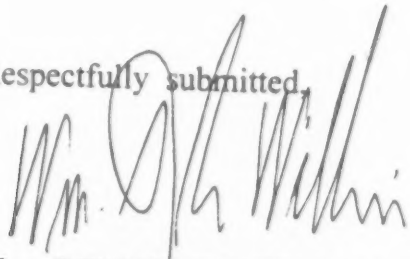
It is a misdemeanor for any person to violate the foregoing provisions of Chapter 5, Title 56. S.C. CODE ANN. §56-5-6190 (1991). Finally, and as recognized in the Fourth Circuit's Opinion at n.1, it is unlawful "for any person to do any act forbidden or to fail to perform any act required" by Chapter 5, Title 56. S.C. CODE ANN. §56-5-730 (1991). Since local authorities may act through their officials to control parking, it is simply unlawful for any person to disregard a summons; that is the offense which LeGrand Young stated, however unartfully, in his words to the magistrate and in his affidavit.

CONCLUSION

The Petitioner has not presented special or important reasons for granting certiorari in her case. The Fourth

Circuit Court of Appeals properly apprehended and analyzed the controlling law relating to procedural due process claims arising out of a contention that an arrest was based on less than probable cause. Questions of South Carolina common law present no important or significant considerations for this Court. Consequently, the Respondents respectfully request that the Court deny the Petition for Writ of Certiorari.

Respectfully submitted,



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